E-commerce Regulations in Middle East

ABSTRACT

The impact of e-commerce on our lives nowadays is undeniable. E-commerce is currently considered as one of the main tools for the development and growth for most enterprises. Particularly, the occurrence of the COVID-19 pandemic showed a noticeable surge in using e- commerce, hence raising e-commerce's share of global retail trade from 14% in 2019 to about 17% in 2020.[1] Further, e- commerce enables businesses to expand to geographic markets that they otherwise would not reach, and its operational costs are usually low.

That being said, most countries worldwide are now adopting legislations that are dedicated specifically to govern and recognize the e-commerce activity. In the same context, currently 82% of the countries have adopted e-commerce laws, 56% of the countries have adopted consumer protection laws.[2]

This essay addresses e-commerce legislations in the MENA region, and particularly in Egypt, as follows: i) main regulations governing e-commerce; ii) consumers rights and protection; iii) the liability of the marketplace intermediaries; iv) online contracting; and v) an overview on online payment.

I. Overview on the Main Regulations Governing E-commerce:

Although e-commerce legislations are currently adopted in many countries in the Middle East, there is no specific unified e-commerce law in Egypt to date. Instead, e-commerce in Egypt is subject to the general rules governing commerce in general including the Civil Code, the Penal Code, the Commercial Code no. 17/1999, the Consumer Protection Law no. 181/2018 (the "**CPL**") and the Intellectual Property Rights Law. In addition, e-commerce is subject to regulation under different laws that address digital aspects of e-commerce such as the Media Law, the Personal Data Protection Law, the Cybercrimes Law, the E-signature Law and the electronic payment regulations.

On the contrary, Saudi Arabia, for example has adopted a unified e-Commerce law in 2019 to regulate and censor the transactions conducted online as well as ensuring consumer protection. Also, the UAE has thoroughly regulated e-commerce by issuing the *Electronic Commerce and Transaction Act* in 2006,

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[1] https://unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point

[2] https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide

whereby it governs online contracting, and create a legal framework for executability of both electronic contracts and electronic signatures.

In Lebanon, Law no. 81/2018 on Electronic Transactions and Personal Data was passed, which provides both persons and businesses a higher level of legal protection and security. The Tunisian e-commerce law no. 83/2000 was also passed and addresses electronic trade and transactions in Tunisia for the first time.[3]

II. Consumer Rights and Protection:

- **What is the purpose of the Consumer Protection Laws and who is the consumer?**

One of the primary objectives of establishing a unified law for e-commerce in the Middle East is the protection of the consumers' rights. Hence, many countries in the Middle East have issued a separate law regarding consumers protection to enhance a wider range of protections to consumers, including protections from false or misleading advertisements, or hazardous products. That said, in Egypt, the CPL is issued to address Business to Consumers (B2C) transactions, for the purpose of guaranteeing and defending the consumer's fundamental rights regarding the goods and services that the consumer buys, and the businesses they deal with at the market. In the same respect, UAE has also issued the Consumer Protection law no. 15/2020 (the "**UAE CPL**"), in a bid to protect consumer privacy and impose hefty penalties on whoever infringes the consumer rights stipulated under the UAE CPL.

The CPL defines the consumer as any natural or legal person to whom a product is offered to satisfy his non-professional, non-crafted or non-commercial needs or with whom a transaction or conclusion of an agreement is made for said purpose.[4]

- **How are the Consumers Protected?**

A) Disclosure requirements

Many of the e-commerce laws in the Middle East impose disclosure requirements on sellers/suppliers, such requirements are considered one of the fundamental pillars to protect the consumer. For example, the CPL provides that all advertisements, data, information, documents, invoices, receipts and

[3]Tunisian E-commerce law no. 83/2000
[4] Article 1 of CPL

contracts, including electronic exhibits and documents, as well as any other items issued by a *supplier*[5] in its dealings with the consumer shall be written in the Arabic language, in a legible and clear form. The CPL further requires that communications from a supplier to a consumer shall include the data that would determine its identity, in particular its name, address, contact details, its commercial register number and trademark, if any. Such data may be in two or more languages, one of which must be Arabic.[6] Failure to comply with such disclosure requirements will result in imposing a fine that varies between EGP 10,000 and EGP 500,000 or the equivalent of the product subject of the violation, whichever is greater.[7]

Furthermore, the supplier shall provide the consumer with an invoice including all relevant supplier information, including, in particular the latter's tax registration number, the date of the transaction or contract, the price, specifications, nature, quality and quantity of the product pursuant to article 10 of the CPL. In case the supplier failed to provide an invoice, the consumer has the right to do prove the specifications of the product by all means.[8]Additionally, the supplier is obliged to clearly inform the consumer of all the essential data of the products, in particular the source of the same, its components, qualities and basic characteristics, the method of use, the comprehensive price and the method of payment.[9]

In the same context, the UAE CPL obliges the providers to submit, to the competent authority, all commercial books and ledgers which detail trade data for goods owned or possessed, in addition to information on the value as well as all supporting documents and invoices.[10]

It is also worth noting that in case of selling used products, the CPL obliges the supplier to provide sufficient information to the consumers about the condition of the used product, and its defects (if any), in a manner that does not lead to creating an untrue or misleading impression to the consumer.11

B) Filing Complaints

5 The CPL defines the supplier as: every person who engages in a commercial, industrial, professional or craft activity that provides a service to the consumer, or produces, manufactures, imports, exports, sells, trades, distributes or markets a commodity, with the aim of providing it to the consumer, dealing or contracting it with him in any way, including electronic means and other modern technical means

6 Article 5 of the CPL

7 Article 65 of the CPL

8 Article 11 of the CPL

9 Article 3 the Executive Regulations no. 822/2019 implementing the CPL

10 Article 25 of the UAE CPL

11Article 35 of the CPL, and article 23 of the Executive Regulations no. 822/2019 implementing the CPL

The Egyptian Consumer Protection Agency (the "**CPA**") governs any transaction for the sale of a product or provision of a service between a merchant (business) and a consumer. The CPA is the authority responsible for implementing the CPL. In this regard, the CPA is responsible of monitoring trade activities and initiating legal actions against violations. The CPL also has entrusted the CPA with other competencies, including: a) receive complaints and communications of all kinds from consumers and associations and investigate them; b) coordinate and cooperate with and provide technical support to the departments and sectors concerned with complaints of consumers, users, citizens and customers in various departments, ministries and authorities; c) collaborate with the regulatory authorities in controlling the markets and dealing with any violation of the provisions of the CPL; d) collaborate with entities locally and abroad to support the protection of consumer rights and take precautionary measures to identify any potential harm to the consumer; e) opine on legislation, policies or decisions which may affect consumer rights; and f) initiate claims to protect the rights of mass consumers or be a party in them.

The CPA is also spreading awareness regarding consumer's rights and duties through their website and a mobile application where consumers can make and track complaints regarding e-commerce transactions.[12]

In addition**,** the consumer has the right to file a lawsuit against unfair business practices in civil courts if his/her rights have been infringed and obtain full compensation of the damages that were suffered. We can see such application in the law of commercial data in Saudi Arabia which provided that "Without prejudice to the right of the parties concerned to claim compensation for damages arising from the use of untruthful data, they may at any time, even prior to filing any lawsuit, resort to the Board of Grievances to take the necessary protective measures."13.

C) Refund and Exchange Policies

The CPL ensures that the refund and exchange policies shall be in favor of the consumer to prevent sellers from imposing oppressive terms on consumers. In this respect, article 21 of the CPL stipulates that "*The consumer shall have the right, within thirty (30) days of the receipt of the product, to replace or return the same with*

[12]https://www.cpa.gov.eg/en-us/Complaints/Complaint-filing
13 Article 12 of the Saudi law Commercial Data.
https://mci.gov.sa/en/Regulations/Pages/details.aspx?lawId=274cc6cf-3b9f-433a-9b32-a81f009745a7

a refund of its value, if the product is defective, or if it is not in conformity with the specifications or the purpose for which it was contracted."[14]

Also, article 17 of the CPL grants the consumer the right to replace or return the product with full refund, without giving any reasons and without incurring any expenses within fourteen (14) days of receiving the product, without prejudice to any legal guarantees or conditions or a better agreement for the consumer.[15] Such right is further established in online contracting, whereby the consumer has the right to rescind the online contract within 14 days of receiving the product, except in the following cases:

1. If the consumer has fully benefited from the service prior to the expiry of the time period set for the right to cancel;
2. if the agreement includes products made at the consumer's request;
3. if the agreement includes videos, CDs, information software or publications of which its packaging has been removed;
4. if a defect occurs in the product due to poor possession by the consumer;
5. In cases where the request for cancellation is contrary to the nature of the product, such as perishable products, or cosmetics.

D) Protecting the Consumer's Data

The CPL obliges the supplier to maintain the consumer's information and data and not to circulate or disclose it in violation of the provisions of the CPL or the relevant laws, unless the consumer's explicit consent is obtained. The supplier shall also take all necessary precautions to maintain the confidentiality and privacy of such data and information.[16] Violation of the aforementioned obligation will result in imposing a fine not less than EGP 30,000 and not exceeding EGP 1,000,000 or twice the value of the product, subject of the violation, whichever is greater.[17]

Further, the Egyptian Data Protection Law no. 151/2020 (the "**DPL**") prohibits any electronic communication for the purpose of direct marketing to any data subject[18], unless the following conditions are met:

1. Obtaining the consent of the data subject;

[14] Article 21 of CPL
[15] Article17 of the CPL
[16] Article 29 of the CPL
[17] Article 65 of the CPL
[18] The Data Protection Law no. 151/2020 defines data subject as: "*any natural person to whom electronically processed personal data is attributed which identifies them legally or factually and enables their identification from any other person".*

2. the electronic communication includes the identity of its creator and sender;
3. the sender has a valid address in order to be reached;
4. the communication indicates that its purpose is direct marketing; and
5. setting clear and accessible mechanisms to allow the data subject to refuse electronic communication or to withdraw his consent to receiving such communication.[19]

Furthermore, the DPL obliges the sender of any electronic communication for the purpose of direct marketing to undertake the following:

1. Specifying a defined marketing purpose;
2. refraining from disclosing the contact details of the data subject; and
3. maintaining electronic records evidencing the consent of the data subject to receive electronic marketing communication and any amendments thereof, or their non-objection to its continuity for a duration of three (3) years from the date the last communication has been sent.[20]

E) Protection against Deceptive Behavior

The CPL aims at shielding the consumer from being deceived by unethical practices and acts from the producer or the advertiser that leads to creating a wrong or misleading impression about the product to the consumer or that renders him confused or mistaken. Hence, any acts that involve deceptive behavior to elements such as: the product's nature, essential characteristics, components or quantities, the product's origin, weight, size, method of manufacture, production date, expiry date or the characteristics of the product and the expected results of its use; will be penalized with a fine that varies between EGP 50,000 and EGP 2 million or twice the value of the product subject violation.

III. Online Contracting:

A. What are the obligations imposed on suppliers prior to online contracting?

Pursuant to the CPL, the suppliers shall provide the consumer with information that enable the latter to make the decision of contracting, such information shall include, the supplier's data, the data of the product which

[19] Article 17 of the DPL
[20] Article 18 of the DPL

must include its price, taxes, shipping costs, guarantee, and provisions of cancelling the contract[21].

B. Are E-signatures and E-contracts legally binding?

The Egyptian E- Signature Law no. 15/2004 (the "**ESL**") gave the E-signature, and E-contracts, within the scope of civil, commercial and administrative matters, the same evidential value as signatures on paper.[22]The ESL and its executive regulations stipulate that, in order to consider the electronic signature and documents valid in proof, the following conditions shall be met:[23]

1. The electronic signature is linked exclusively to the signatory;
2. the signatory shall have sole control over the electronic media used (this shall be technically available to determine the source of creating electronic writing or official or customary electronic documents, and the degree of their creator's control over this source); and
3. the possibility of detecting any modification in the data of the electronic document or signature.
4. In the event that electronic writings are issued without human intervention, partially or totally, their authenticity shall be established whenever the time and date of their creation can be determined with a proof that those writings have not been tampered with.[24]

IV. Liability of marketplace intermediaries:

A. Who are considered marketplace intermediaries?

The CPL sets its obligations only on "*suppliers*" and "*advertisers"*[25]*,* hence there is no specific legislation in Egypt that regulates marketplace operators. The UAE CPL reiterates similar definitions.[26]

Unlike the CPL in Egypt, the e-commerce Law in Saudi Arabia did not distinguish between the supplier and advertiser, as it made a general definition for anyone engaging in e-commerce activities(the "**Service Provider**"). The e-commerce Law in Saudi Arabia divides Service Providers into two categories: a) the seller who holds commercial records, and practices e-commerce

[21]Article 37 of the CPL
[22] Article 14 and 15 of the ESL
[23]Article 18 of the ESL
[24] Article 9 of the ESL
[25] An advertiser is defined under the CPL as any person who advertises or promotes a service or goods personally or through another person through any media or advertising means, including digital means.
[26] Article 1 of the UAE CPL

activities; and b) the practitioner who does not hold commercial records, and practices e-commerce activities.[27]

B. What are the implications of selling defective products?

Product liability is regulated under the Egyptian Commercial Code no. 17/1999 (the "**Commercial Code**"). The CPL regulates the product liability in the context of consumer transactions.

The Commercial Code provides that the producer and the distributor of a product shall be liable to any person suffering harm caused by a product, if the harmed person proves that such harm resulted from a defect in the product in question. The Commercial Code also deems a product "defective" if sufficient precautions were not taken in product design, manufacture, assembly, processing for consumption, storage, packaging, method of display or use, so as to prevent the occurrence of harm or to warn against the possibility of such harm.[28]

Whilst the CPL, as previously mentioned regulates product liability in the context of consumer transactions. It distinguishes between the liability of the supplier, the manufacturer/producer and the distributor/seller, as follows:

1. The manufacturer is liable for any damages caused by the product if it is proved that such damages were caused due to a defect in its design, production or installation;
2. The distributor/seller is liable when the damage caused by the product was due to the way the product was prepared for consumption, preservation, packaging, trading or display; and
3. The supplier (including the manufacturer and all persons in the supply chain till the customer) is liable for damages caused by the product due to the wrong use if it is proved that such damage was due to that the supplier failure to take necessary precaution to prevent the damage or warn the customer of the occurrence of such damages.

In all events, all suppliers, including, manufacturers, producers, distributors, and sellers shall be jointly liable vis -a -vis the customer.[29]

C. What are the implications of selling counterfeit products?

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[27] Article 1 of the Saudi Arabia E-commerce Law
28 Article 67 of the Commercial Code
[29] Article 27 of the CPL

Pursuant to Law no. 48/1941 on combating fraud and deception, a penalty of imprisonment for a period of no less than one year and/or a fine of no less than EGP 5000 and not exceeding EGP 20,000, or the equivalent value of the product subject of the violation, whichever is greater, shall be imposed on anyone who deceives or attempts to deceive the consumer in any of the following aspects:

1. the reality of the products, their nature, their essential qualities;
2. the type, origin, or source of the products in cases where, such type, origin, or source is considered a fundamental reason in buying the product; or
3. the number, quantity, size, amount, weight, capacity of the product.

The Intellectual Property Law no. 82/2002 (the "**IPR**") further penalizes the sale, offering for sale or possession for trade of counterfeit products with imprisonment for a period not less than two months and/or a fine between EGP 5000 and EGP 20,000. In case of repetition, the penalty shall be imprisonment for not less than two months in addition to a fine between EGP 10,000 and EGP 50,000. In all cases the court may order the confiscation of the products subject of the crime, or any relevant gains and any tools used to commit the violation.

The court may also order the closure of the entity used by the violator to commit the crime for up to 6 months. Store closure shall be mandatory in case of recidivism.[30]

Also, article 117 of the IPR grants the court the right to order the destruction of the illegal marks, counterfeit goods, products, packaging, invoices, correspondence, signboards, advertisement, or any other item bearing the illegal mark. It may also order the destruction of the machines used specifically in the act of infringement."31 Such provision emphasizes the gravity of these illegal acts and the government's efforts to erase or at least reduce the detriment caused.

Furthermore, article 26 of the ordinance no. 06/03 in Algeria relating to trademarks stipulates that "Every act that infringes the exclusive rights of a trademark carried out by a third party in violation of the rights of the owner of

[30] Article 113 of the IPR
31 Article 117 of the IPR
https://www.jpo.go.jp/e/system/laws/gaikoku/document/index/egypt-e_chiteki_zaisan.pdf

the mark shall be considered a misdemeanor of imitation of a registered mark"[32]

The ordinance no. 06/03 in Algeria penalizes any person who commits a counterfeit felony with imprisonment for a period that varies between six months and two years, and/or a fine not less than AD 2.500.000 and not exceeding AD 10.000.000, in addition to temporary or final shutdown of the institution; confiscation of tools and means used in such felony; damage of elements subject matter of the felony.

That said, it is clear that the Algerian legislator has adopted the broad concept of imitation which is considered to be from the common forms of counterfeiting. The definition is broad and not restricted to certain acts in order to expand the circle of criminalization of trademark infringements and provide further protection.

V. Online Payment:

There is raising awareness among Middle East countries regarding the importance of regulating payment through non-cash methods, due to its importance to the economy and to help curb the COVID-19 pandemic.

Egypt has issued the Law no. 18/2019 (the "**Non-cash Payment Law**") on organizing non-cash payment methods. The Non-cash Payment Law defines non-cash payment method as: "*each payment method results in adding in one of the banking accounts of the beneficiary like Deposit orders, transfer, discount, credit cards and paying using smartphones or other methods being recognized by the governor of the Egyptian Central Bank*".[33]

Establishing the importance of using online payment methods, the Non-cash Payment Law provided that all public authorities, public legal persons and companies owned or most owned by the state to pay monetary receivables to its members and workers through non-cash methods.

Private legal persons and establishments of all kinds are also obliged to pay all the dues of their employees, experts, chairmen and members of boards of directors and committees, and social insurance contributions by means of non-

[32]Article 26 of Ordinance No. 06-03 of Jumada I 19, 1424 corresponding to July 19, 2003, relating to trademarks https://wipolex.wipo.int/ar/text/228125

[33] Article 1 of Non-cash Payments Law no. 18/2019

cash payment, if the number of their employees exceeds 25 or the total value of their monthly salaries exceeds EGP 100,000.[34]

Moreover, in Saudi Arabia in 2004 the Saudi Arabian Monetary Agency (SAMA) made many initiatives regarding online payment for example, it provided an alternative electronic payment system known as "SADAD" which is a platform with a simple and safe infrastructure by which individuals can pay electricity, water and government fees through, then other platforms where introduced to the Saudi community like Saree' and Mada .[35]

In light of the above, the non-cash payment laws are deemed a significant step towards encouraging the regulation of the unavoidable transition to a digital economy.

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[34] Article 2 of executive regulations no. 1776/2020 implementing Law no. 18/2019
[35] https://www.my.gov.sa/wps/portal/snp/aboutksa/ePayment